IN THE TERRITORIAL COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

VALERIE T. DIAZ,	)	CIVIL NO. SC 209/97
	)	
Plaintiff	)	ACTION FOR DEBT
	)	
v	)	
	)	
BARBARA ANN PROPER d/b/a Your Way Beauty Salon,	)	
	)	
Defendants.	)	
	)	

CLARIFYING MEMORANDUM AND ORDER
(July 19, 1998)

ANDREWS, Judge

INTRODUCTION

This matter came before the Court upon receipt of a copy of a Memorandum, dated July 6, 1998, from the District Court of the Virgin Islands - Bankruptcy Division. It was authored by two Virgin Islands District Court judges sitting as bankruptcy judges pursuant to 28 U.S.C. 152(a)(4). The Memorandum addresses this Court's Order in the above captioned matter issued on April 25, 1998. The Bankruptcy Court implies that its Memorandum was written to clarify this Court's "apparent misunderstanding" of federal law and to avoid confusion and needless confrontation between federal and territorial courts. Quite frankly, this Court

has no problem with confrontation. It is through confrontation that many great nations have become so. Further, it is the view of this Court that the Bankruptcy Court has misunderstood this Court's position. This Memorandum is intended to provide further clarity for the Bankruptcy Court and litigants as well.

FACTS

1) Plaintiff obtained a judgment in this matter for $2,878.00 on May 6, 1997.

2) On September 5, 1997 she requested a writ of execution on Defendant's 1990 Ford automobile (#C2000).

3) Defendant's Ford was attached on November 12, 1997, and sold by auction on December 18, 1997.

4) On December 18, 1997, Defendant filed a request to set aside the sale and for release the vehicle forthwith, pursuant to 11 U.S.C. 362(a) and 103(a). She alleged that a bankruptcy petition had been filed on December 17,1997. By Order entered December 22, 1997, this Court vacated the December 18th sale, and denied the Request for Release of the Vehicle.

5) On January 9, 1998, Defendant filed a second motion for release of her vehicle. She claimed that it was exempt pursuant to 11 U.S.C.

522(d)(2) and 547(b). On February 13, 1997, she filed yet another request for release of the vehicle. In that request she indicated that a "Debtor's 341 hearing/meeting" was conducted on January 28, 1998, and reiterated that the vehicle was exempt pursuant to Section 522(d)(2). While a ruling on Defendant's requests was pending, a copy of an Order dated March 12, 1998 issued by the U.S. Bankruptcy Court for the Virgin Islands was filed with this Court on March 13, 1997. That Order stated that "the custodian" of the Debtor's 1990 Ford Escort shall forthwith release it to her. It was written by Joseph L. Cosetti, purportedly sitting as a bankruptcy judge by Order of Recall issued by the Judicial Council of the Third Circuit dated August 26, 1997. On March 23, 1998, this Court denied Defendant's second and third requests for release of the vehicle.

6) On April 14, 1998, Defendant filed a copy of an "amended order" from the same Bankruptcy Court. This order commanded the "office of the Marshals of the Territorial Court of the Virgin Islands, Division of St. Croix," to immediately release Defendant's vehicle. It further indicated that a show cause order, to hold them in contempt, would issue upon notice of non-compliance to the Bankruptcy Court.

7) Neither the Territorial Marshal, nor any court employee for that

matter, was formerly served with copies of any of the Bankruptcy Court's orders.

8) On or about April 22, 1998, bankruptcy judge Joseph L. Cosetti, telephoned this Court concerning compliance with his order. He insisted that he did not want to speak to the judge who denied release of the vehicle, but rather to the chief marshal. He further stated that he would not want to send federal marshals to arrest the Territorial Court marshals.

9) On April 24, 1998, Judge Cosetti finally called this Court and discussed compliance with his order with the undersigned. He insisted that the Bankruptcy Court had the authority to order the marshals of this Court to release the vehicle despite the existence of this Court's order to the contrary. The undersigned disagreed, and the matter remained unresolved.

10) On April 25, 1998, this Court issued an Order again denying release of the vehicle and explaining its position concerning the Orders of the Bankruptcy Court.

DISCUSSION

1) Identification of Pertinent Issues

This Court can appreciate the attempt by the Memorandum authors to

create peace between the courts, if such is their intent. Any such attempt, however, is doomed to failure unless, and until, the Bankruptcy Court recognizes and admits, if not apologizes, for its improper conduct. Conspicuously absent from the Bankruptcy Court's 17-page opinion on federal law is any mention, whatsoever, of the bankruptcy judge's [farwud and outa place] conduct. This Court was disrespected when the bankruptcy judge elected to telephone this Court and threaten to arrest its employees. It was not the "proceedings and orders of the bankruptcy judge" that was interpreted as intimidation and stemming from an imperialistic attitude. See In Re Barbara Proper, Memo dated 7/6/98, Pg. 14 (D.C. Bank.Div.). It was his improper conduct mentioned above, which ran afoul of the appearance of impropriety and placed the Territorial Court marshal's in a difficult position, that was so interpreted. Absent recognition of this disrespect, peace is yet a distance away.

The Bankruptcy Court has gone to great lengths obviously attempting to establish the incorrectness of this Court's judgment which denied release of Defendant's vehicle. The correctness of this Court's judgment however, is not an issue here. Consequently, this Court will not address it. Suffice to say that many arguments made and authorities cited by the Bankruptcy

Court in its Memorandum were not made or cited to this Court by Defendant.[1] The Memorandum authors have failed to address the real issues in this matter. They are: 1) Whether the Bankruptcy Court had jurisdiction to review this Court's December 22, 1998 decision that the automatic stay provisions did not require release of the vehicle?; and 2) What was Defendant's proper recourse to this Court's adverse decision? Before addressing these issues however, it is important to touch on two more fundamental issues.

2) Designation of Bankruptcy Judge / Contempt Power

The first fundamental issue is whether the bankruptcy judge had any authority to assume such a role, and thus issue any of the orders it did concerning release of the vehicle? Only judges of the District Court for the territory of the Virgin Islands can assume the role of bankruptcy judges for the Virgin Islands District Court. 28 U.S.C. 152(a)(4). Section 152(a)(4) provides for appointments of bankruptcy judges by the circuit courts. Such appointments, however, are conditioned on authorization by Congress

[1]The Bankruptcy Court, in its Memorandum, has acted as an adversary for Defendant. It sought to make every argument and cite every statute that would support release of the vehicle. It cited 11 U.S.C. 522(f)(1),541(a),542,543 and made related arguments. None of these was presented to this Court by Defendant.

pursuant to Section 152, which is yet to be given. Although Section 155(b) provides for the recall of retired bankruptcy judges to serve in any "judicial district" by the judicial council, the Virgin Islands is not included in the "judicial districts". See 28 U.S.C. 155(b); 28 U.S.C. 152(a)(2). Therefore, the recall, by Order of the Judicial Council of the Third Circuit dated 8/26/97, of the bankruptcy judge, who issued the orders in this matter, to serve in the district of the Virgin Islands, is of questionable validity. This is the conclusion reached by Chief Judge Thomas K. Moore, in a recent lengthy opinion. There he addressed an appeal to the District Court of the Virgin Islands of orders issued by the very same bankruptcy judge who issued the orders in this matter. Judge Moore held that "there is no statutory authority to assign a United States bankruptcy judge to be a judicial officer of [the Virgin Islands District Court]", and that the bankruptcy judges' order was therefore a nullity. In Re Jaritz Industries, Ltd., 36 V.I. 225,228,230,231 (V.I.D.C. 1997). Thus, Judge Cosetti's very designation appears contrary to law. His orders, therefore, are of questionable validity.

The second fundamental issue is whether the Bankruptcy Court has contempt powers over the marshals of this Court. There is existing authority for the proposition that bankruptcy judges carry no such power. In In Re

Sequoia Auto Brokers Ltd., Inc., the Ninth Circuit concluded that bankruptcy judges have no jurisdiction to issue contempt orders. It stated that based on its conclusion that such "judges' exercise of the civil contempt power is not express or implied in the new Congressional enactments, we hold that Congress has not conferred the civil contempt power on bankruptcy judges."827 F.2d 1281,1291 (9th Cir. 1987). The doubtfulness of the bankruptcy judge's contempt power makes his threats to arrest even more improper.

3) Bankruptcy Court's Jurisdiction / Proper Appellate Procedure

Assuming that the bankruptcy judge's Crder was valid, this Court now turns to the real issues in this case. This Court maintains that the Bankruptcy Court was without jurisdiction to decide the issue of the vehicle's release. That issue was decided by this Court, on December 22,1997, adversely to Defendant. In so doing, this Court exercised its concurrent jurisdiction over automatic stays pursuant to 11 U.S.C. 362. See 48 U.S.C. 1612(b) and 4 V.I.C. 76(a) (vesting original jurisdiction in this Court over all civil actions); See also V.I. Housing Authority v. Coastal General Construction, 27 F.3d 911, 915 (holding that the Virgin Islands

Territorial Court and the District Court has concurrent jurisdiction over federal question and diversity cases). Courts have recognized the concurrent jurisdiction between state and federal courts over bankruptcy stays. See In Re: Richard A. Weller, 189 B.R. 467, 471 (Bankr.E.D. Wis. 1995) (stating that Wisconsin "circuit court had jurisdiction to determine whether trial of the action pending before it was subject to the stay of [section] 362 of the Bankruptcy Code."); In Re: Lawrence B. Cummings, 201 BR. 586, (Bankr. S.D. Fla. 1996)(stating that "it is well-settled that state courts have concurrent jurisdiction with bankruptcy courts to determine the applicability of the automatic stay."). This Court then, having first decided an issue it was competent to decide, was, and still is, entitled to have its decision given full faith and credit. Defendant's proper recourse was not to seek review in the Bankruptcy Court, but to appeal this Court's decision through appropriate channels. She could have also, and still can, move this Court for reconsideration. See Celotex Corporation v. Edwards, 115 S.Ct. 1493, 1501) (1995) (holding that "it is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected."); Homola v. McNamara, 59 F.3d 647,

651 (7th Cir. 1995) (stating that "once a court issues an order, the collateral bar doctrine prevents the loser from migrating to another tribunal in search of a decision he likes better."); Kelleran v. Andrijevic, 825 F.2d 692, 695 (2nd Cir. 1987) (stating that "bankruptcy proceedings may not be used to re-litigate issues already resolved in a court of competent jurisdiction."); Cisneros v. Cost Control Marketing & Sales Management, 862 F.Supp. 1531, 1533 (W.D.Va. 1994) (asserting its concurrent jurisdiction with the bankruptcy court relative to automatic stays and concluding that "long-standing principles of comity suggest that it is appropriate for this court, rather than the bankruptcy court, to decide the issue because the proceeding was first filed in this court.");In re: Louis Paul Massa, No. 92-21841, 1998 Bankr. Lexis 104, at * 29, (stating that "under the Rooker-Feldman Doctrine, when a state court has jurisdiction to decide a federal question, a federal court, including a bankruptcy court, has no subject matter jurisdiction to review the state court's determination on that federal question."); In the Matter of James K. Marler, et.al., 58 B.R. 481, 483 (Bankr. D. Kan. 1986) (stating that "the bankruptcy court is without jurisdiction to either enjoin a state court's action or void its judgement as a violation of the automatic stay."). This is so, even if this Court's decision is incorrect, for this Court

carries along with the authority to decide, the concomitant right to err. The Bankruptcy Court cannot "act as an appellate court to review that determination and correct it. This is true even if it were clear that it was an erroneous determination." In re: Louis Paul Massa, at * 30; See also In Re: Richard Willer, 189 B.R. at 470 (stating that state court's "decision, right or wrong, is binding on this court with respect to whether the trial was stayed by [section] 362."); In Re: Robert L. Jungkunz, 191 B.R. 684, 687 (Bankr. S.D.O. 1996) (stating that "this court is not an appellate court with regard to state courts. The judgments of the state court, even if incorrect, must be given res judicata effect in this court.").

4) Obligation of Judges / Respect Between Courts

Finally, this Court needs no schooling from the Bankruptcy Court, or any one, on the "responsibility and obligation of judges to follow the supreme law of the land as enacted by Congress pursuant to the Constitution of the United States". In Re Barbara Proper, Memo at Pg. 15. The territorial judges took an oath to support, obey, and defend, the Constitution and laws of the United States. This is not a case of deliberate refusal to follow the law. This Court respected and followed the "supreme

law" when it vacated the sale. It is a case of conflicting interpretations of the law. The "supreme law" authorizes this Court to perform the function of interpretation. The issue is one of respect. If the bankruptcy judges, indeed, wholeheartedly joins in the emancipation celebration, then they should treat the court of the emancipated people with respect. They should not threaten the people of this Territory with its questionable contempt powers, and then have the real bankruptcy judges (i.e., the Memorandum authors) ignore, overlook, and remain mum about their judge's blatantly improper conduct. Such silence condones the disrespect and can only result in the recurrence of the "apparent misunderstanding". The question thus surfaces, does the Bankruptcy Court respect the authority and dignity of this Court?

This Court need not consult with any magistrate to facilitate communication between the courts. There is no communication problem. There is a need for plain ordinary respect, a quality that emanates from the heart. In its absence, this Court will continue to register its objection.

CONCLUSION

For the foregoing reasons, this Court concludes that the purported

Order of the District Court - Bankruptcy Division dated July 6, 1998, is a nullity.

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ALPHONSO G. ANDREWS, JR.
Territorial Court Judge

ORDER

_____In accordance with the above Clarifying Memorandum, it is hereby

ORDERED that the Order of this Court issued on April 25, 1998 requiring the Territorial Marshal to main custody of the 1990 Ford attached in this matter shall remain in effect.

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ALPHONSO G. ANDREWS, JR.
Territorial Court Judge

ATTEST:
Yvonne Wesselhoft,
Clerk of the Court

By:_____
Deputy Clerk